



IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA,)
)
Plaintiff,)
)
v.) CIVIL ACTION NUMBER: CV-2005-219
)
ABBOTT LABORATORIES, INC., et al.,)
)
Defendants.)

**DEFENDANT GENZYME CORPORATION'S ANSWER TO
PLAINTIFF'S SECOND AMENDED COMPLAINT**

Genzyme Corporation ("Genzyme"), by its undersigned attorneys, answers the Second Amended Complaint of the State of Alabama (the "Plaintiff") as follows:

1. The allegations set forth in Paragraph 1 state legal conclusions as to which no answer is required. To the extent an answer is deemed to be required, Genzyme denies the allegations in Paragraph 1.

2. Genzyme is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in the first sentence of Paragraph 2. Genzyme denies the allegations set forth in the second sentence of Paragraph 2. Genzyme is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in sentences 3 through 5 of Paragraph 2. Finally, Genzyme denies the allegations in the last sentence of Paragraph 2.

3-4. The allegations set forth in Paragraphs 3 and 4 state legal conclusions as to which no answer is required. To the extent an answer is deemed to be required, Genzyme denies the allegations in Paragraphs 3 and 4.

5. The allegations set forth in Paragraph 5 state legal conclusions as to which no answer is required. To the extent an answer is deemed to be required, Genzyme denies the allegations in Paragraph 5.

6. The allegations set forth in Paragraph 6 state legal conclusions as to which no answer is required. To the extent that the allegations in Paragraph 6 refer to statutes or regulations, those sources speak for themselves and are the best evidence of their contents, and any characterizations thereof are denied. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraph 6.

7-45. The allegations contained in Paragraphs 7 through 45 refer to parties other than Genzyme. Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in said Paragraphs. To the extent said Paragraphs are deemed to include allegations against Genzyme, Genzyme denies the allegations.

46. Answering Paragraph 46, Genzyme admits that it is a Massachusetts Corporation. Answering further, Genzyme states that its principal place of business is located at 500 Kendall Street, Cambridge, MA. 02142. Genzyme further admits that it is engaged in the business of manufacturing, distributing, marketing, and/or selling prescription drugs, some of which are reimbursed by some state Medicaid agencies. The last sentence of paragraph 46 contains legal conclusions to which no response is required. To the extent a further answer is deemed required, Genzyme denies the allegations.

47-93. The allegations contained in Paragraphs 47 through 93 refer to parties other than Genzyme. Genzyme states that it is without knowledge or information sufficient to form a belief

as to the truth or falsity of the allegations contained in said Paragraphs. To the extent said Paragraphs are deemed to include allegations against Genzyme, Genzyme denies the allegations.

94. To the extent the allegations set forth in Paragraph 94 state legal conclusions, no answer is required. To the extent the allegations contained in Paragraph 94 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to their truth or falsity. Genzyme otherwise denies the allegations contained in Paragraph 94.

95-97. The allegations set forth in Paragraphs 95 through 97 state legal conclusions as to which no answer is required. To the extent an answer is deemed to be required, Genzyme denies the allegations in Paragraphs 95 through 97.

98. Genzyme admits the allegations contained in the first sentence of Paragraph 98. Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 98.

99. To the extent the allegations in Paragraph 99 refer to statutes, regulations, or other documents, those sources speak for themselves and are the best evidence of their contents.

100. To the extent the allegations in Paragraph 100 refer to statutes, regulations, or other documents, those sources speak for themselves and are the best evidence of their contents, and any characterizations thereof are denied. To the extent the allegations contained in Paragraph 100 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained

therein. To the extent the allegations contained in Paragraph 100 are deemed to include allegations against Genzyme, Genzyme denies the allegations.

101. To the extent the allegations in Paragraph 101 refer to statutes, regulations, or other documents, those sources speak for themselves and are the best evidence of their contents, and any characterizations thereof are denied.

102. To the extent the allegations in Paragraph 102 refer to statutes, regulations, or other documents, those sources speak for themselves and are the best evidence of their contents, and any characterizations thereof are denied. To the extent the allegations contained in Paragraph 102 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. Genzyme otherwise denies the allegations contained in Paragraph 102.

103. The allegations set forth in Paragraph 103 state legal conclusions as to which no answer is required. To the extent the allegations contained in Paragraph 103 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraph 103.

104. To the extent the allegations contained in Paragraph 104 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. Genzyme otherwise denies the allegations in paragraph 104.

105-111. The allegations set forth in Paragraphs 105 through 111 state legal conclusions as to which no answer is required. To the extent the allegations contained in Paragraphs 105 through 111 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraphs 105 through 111.

112. To the extent the allegations contained in Paragraph 112 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. Genzyme admits that the State of Mississippi and Erie and Nassau Counties, New York have filed similar suits against Genzyme. Genzyme further avers that it was voluntarily dismissed from actions brought by the City of New York and by 29 New York counties. Genzyme denies any further allegations in Paragraph 112.

113. The allegations set forth in Paragraph 113 state legal conclusions as to which no answer is required. To the extent the allegations in Paragraph 113 refer to other documents, those sources speak for themselves and are the best evidence of their contents, and any characterizations thereof are denied. To the extent the allegations contained in Paragraph 113 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraph 113. Genzyme further avers that it was voluntarily dismissed from the action brought by the City of New York to which Plaintiff refers in Paragraph 113.

114-120. To the extent the allegations contained in Paragraph 114 through 120 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent the allegations contained in Paragraphs 114 through 120 refer to Genzyme, Genzyme denies the allegations.

121-123. The allegations set forth in Paragraphs 121 through 123 state legal conclusions as to which no answer is required. To the extent the allegations contained in Paragraph 121 through 123 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraphs 121 through 123.

124. The allegations set forth in Paragraph 124 state legal conclusions as to which no answer is required. To the extent the allegations contained in Paragraph 124 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraphs 124.

125-126. Genzyme denies the allegations set forth in Paragraph 125 through 126.

127. Genzyme reasserts and incorporates by reference all preceding paragraphs as though fully set forth herein.

128-130. The allegations set forth in Paragraphs 128 through 130 state legal conclusions as to which no answer is required. To the extent the allegations contained in

Paragraphs 128 through 130 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent an answer is deemed to be required, Genzyme otherwise denies the allegations in Paragraphs 128 through 130.

131. Genzyme reasserts and incorporates by reference all preceding paragraphs as though fully set forth herein.

132-139. Plaintiff's Second Amended Complaint lacks Paragraphs 132 through 139. Therefore, no response is required.

140-142. The allegations set forth in Paragraphs 140 through 142 state legal conclusions as to which no answer is required. To the extent the allegations contained in Paragraphs 140 through 142 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraphs 140 through 142.

143. Genzyme reasserts and incorporates by reference all preceding paragraphs as though fully set forth herein.

144-147. The allegations set forth in Paragraphs 144 through 147 state legal conclusions as to which no answer is required. To the extent the allegations contained in Paragraphs 144 through 147 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the

allegations contained therein. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraphs 144 through 147.

148. Genzyme reasserts and incorporates by reference all preceding paragraphs as though fully set forth herein.

149-152. The allegations set forth in Paragraphs 149 through 152 state legal conclusions as to which no answer is required. To the extent the allegations contained in Paragraphs 149 through 152 refer to parties other than Genzyme, Genzyme states that it is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained therein. To the extent an answer is otherwise deemed to be required, Genzyme denies the allegations in Paragraphs 149 through 152.

Genzyme denies that Plaintiff is entitled to a judgment or to any other relief requested in its section entitled "Prayer for Relief" and unnumbered "Wherefore" Paragraph following Paragraph 152 of the Second Amended Complaint.

AFFIRMATIVE AND OTHER DEFENSES

Further answering and responding to the allegations of the Plaintiff's Second Amended Complaint, and without assuming the burden of proof of such defenses that it would not otherwise have, Genzyme asserts the following:

FIRST DEFENSE

153. No relief against Genzyme is proper and any allegation against Genzyme that is not specifically admitted is hereby denied.

SECOND DEFENSE

154. Plaintiff fails to state a claim against Genzyme upon which relief may be granted.

THIRD DEFENSE

155. Some or all of Plaintiff's claims are barred, in whole or in part, by the political question and separation of powers doctrines.

FOURTH DEFENSE

156. Plaintiff has no standing or capacity to bring some or all of the claims raised in this suit to recover Medicaid expenditures or to seek injunctive relief.

FIFTH DEFENSE

157. Plaintiff has not suffered, and will not suffer, any injury to a legally protected or recognizable interest by reason of the conduct of Genzyme as alleged in the Second Amended Complaint.

SIXTH DEFENSE

158. To the extent Plaintiff obtains recovery in any other case predicated on the same factual allegations, it is barred from seeking recovery against Genzyme based on the Second Amended Complaint pursuant to the doctrines of res judicata and collateral estoppel and the prohibition on double recovery for the same injury.

SEVENTH DEFENSE

159. Plaintiff's claims are barred, in whole or in part, by the First Amendment to the United States Constitution and the analogous provisions of the Constitution of the State of Alabama.

EIGHTH DEFENSE

160. Plaintiff's claims are barred, in whole or in part, by the filed rate doctrine.

NINTH DEFENSE

161. Plaintiff's claims are barred, in whole or in part, to the extent that Plaintiff has released, settled, entered into an accord and satisfaction or otherwise compromised its claims.

TENTH DEFENSE

162. Any and all actions taken by Genzyme with respect to any of the matters alleged in the Second Amended Complaint were taken in good faith and in accordance with established industry practice.

ELEVENTH DEFENSE

163. Plaintiff's state law claims are preempted, in whole or in part, by federal law, including without limitation, the Federal Employment Retirement Income and Security Act of 1974, the Federal Medicare Act, and the Federal Medicaid Act, including all amendments to the same and all regulations promulgated thereunder.

TWELFTH DEFENSE

164. Plaintiff's claims against Genzyme are preempted by the dormant Commerce Clause of the United States Constitution.

THIRTEENTH DEFENSE

165. Plaintiff's claims against Genzyme are barred because Genzyme has complied with all applicable regulations of the federal and state governments.

FOURTEENTH DEFENSE

166. Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation and repose, and by the doctrines of laches, estoppel and waiver.

FIFTEENTH DEFENSE

167. Plaintiff's claims are barred, in whole or in part, because they violate Genzyme's rights under the Due Process and Ex Post Facto clauses of the United States Constitution, as well as the Constitution of the State of Alabama, insofar as Plaintiff seeks to impose liability retroactively for conduct that was not actionable at the time it occurred.

SIXTEENTH DEFENSE

168. Genzyme's statements or actions were not the proximate cause or cause in fact of any injury or alleged loss.

SEVENTEENTH DEFENSE

169. Plaintiff fails to state with particularity facts to support its allegations of fraudulent misrepresentation and fraudulent suppression.

EIGHTEENTH DEFENSE

170. Plaintiff's claims against Genzyme are barred, in whole or in part, because Genzyme did not make any false statements to Plaintiff. As to any statement asserted against Genzyme that Plaintiff alleges to be false or misleading, Genzyme had no reasonable grounds to believe, and did not believe at the time such a statement was made, that the statement was false or misleading.

NINETEENTH DEFENSE

171. Plaintiff's claims against Genzyme are barred because Genzyme did not directly or indirectly engage in any conduct in violation of state or federal law.

TWENTIETH DEFENSE

172. To the extent that Plaintiff seeks equitable relief against Genzyme, Plaintiff is not entitled to such relief because there is an adequate remedy at law.

TWENTY-FIRST DEFENSE

173. Plaintiff's claims against Genzyme for injunctive relief were mooted by the passage of the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

TWENTY-SECOND DEFENSE

174. Some or all of Plaintiff's claims for injunctive relief against Genzyme are barred by the doctrines of *in pari delicto* and/or unclean hands.

TWENTY-THIRD DEFENSE

175. Plaintiff's claims against Genzyme are barred, in whole or in part, due to its failure to join indispensable parties.

TWENTY-FOURTH DEFENSE

176. Plaintiff's claims against Genzyme are barred, in whole or in part, because it suffered no damages as a result of the matters alleged in the Second Amended Complaint.

TWENTY-FIFTH DEFENSE

177. Plaintiff's claims are barred, in whole or in part, because any injuries sustained by Plaintiff were the result of its own conduct or the intervening or superseding conduct of third parties.

TWENTY-SIXTH DEFENSE

178. Plaintiff's claims are barred, in whole or in part: (1) because Plaintiff failed to mitigate its damages, and the failure to mitigate damages should proportionately reduce the recovery and the allocation of fault, if any exists, attributable to Genzyme; (2) because Plaintiff would be unjustly enriched if allowed to recover any portion of the damages alleged in the Second Amended Complaint; (3) by the doctrine of consent and/or ratification to the extent that Plaintiff has received and paid for medicines manufactured, marketed and sold by Genzyme after

the filing of Plaintiff's original Complaint; and (4) because Plaintiff's claims are speculative and remote and because of the impossibility of ascertaining and allocating those alleged damages.

TWENTY-SEVENTH DEFENSE

179. Genzyme is entitled to a set-off – should any damages be awarded against it – for the entire amount of all damages or settlement amounts recovered by Plaintiff, whether a result of *pro tanto* settlements or otherwise, with respect to the same alleged injuries.

TWENTY-EIGHTH DEFENSE

180. The applicable statutory ceilings on recoverable damages must limit any damages recovered by Plaintiff from Genzyme.

TWENTY-NINTH DEFENSE

181. Plaintiff fails to allege facts or a cause of action against Genzyme sufficient to support a claim for compensatory damages, attorneys' fees and/or legal fees, costs and/or prejudgment interest, or any other relief.

THIRTIETH DEFENSE

182. Plaintiff's punitive damages claims against Genzyme: (1) have no basis in law or fact; (2) are not recoverable because the allegations of the Second Amended Complaint are legally insufficient to support a claim for punitive damages against Genzyme; (3) cannot be sustained because laws regarding the standards for determining liability for and the amount of punitive damages fail to give Genzyme prior notice of the conduct for which punitive damages may be imposed and the severity of the penalty that may be imposed and are void for vagueness in violation of Genzyme's due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and the Constitution of the State of Alabama; (4) cannot be sustained because any award of punitive damages exceeding the limits authorized

by the laws or other comparable laws would violate Genzyme's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would be improper under the Constitution, common law and applicable state laws of Alabama; (5) cannot be sustained because an award of punitive damages in this case, combined with any prior, contemporaneous, or subsequent judgments against Genzyme for punitive damages arising from the manufacture, distribution, marketing, or sale of Genzyme's medicines, would constitute impermissible multiple punishments for the same wrong in violation of Genzyme's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would constitute double jeopardy in violation of the Constitution, common law and statutory law of Alabama; (6) cannot be sustained because any award of punitive damages without the apportionment of the award separately and severally between or among the alleged joint tortfeasors, as determined by the alleged percentage of the wrong committed by each alleged tortfeasor, would violate Genzyme's due process and equal protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and would be improper under the Constitution, common law and public policies of Alabama; and (7) cannot be sustained because any award of punitive damages, which are penal in nature, without according Genzyme the same protections that are accorded to all criminal defendants, including the protection against unreasonable searches and seizures, the privilege against self-incrimination, and the rights to confront adverse witnesses, a speedy trial, and the effective assistance of counsel, would violate Genzyme's rights guaranteed by the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment to the United States Constitution and would be improper under the Constitution, common law and public policies of Alabama.

THIRTY-FIRST DEFENSE

183. Plaintiff's claim for punitive damages against Genzyme cannot be sustained because an award of punitive damages by a jury that: (1) is not provided constitutionally adequate standards of sufficient clarity for determining the appropriate imposition of, and the appropriate size of, a punitive damages award; (2) is not adequately instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment; (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including without limitation, the residence, wealth, and corporate status of Genzyme; (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible; (5) is not properly instructed regarding Plaintiff's burden of proof with respect to each and every element of a claim for punitive damages; and (6) is not subject to trial court and appellate judicial review for reasonableness and furtherance of legitimate purposes on the basis of constitutionally adequate and objective standards, would violate Genzyme's Due Process and Equal Protection rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, and would be improper under the Constitution, common law and public policies of Alabama.

THIRTY-SECOND DEFENSE

184. Plaintiff's claim for punitive damages against Genzyme cannot be sustained because an award of punitive damages that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount of punitive damages that may be imposed, would: (1) violate Genzyme's Due Process rights guaranteed by the Fifth and

Fourteenth Amendments to the United States Constitution; (2) violate Genzyme's right not to be subjected to an excessive award; and (3) be improper under the Constitution, common law and public policies of Alabama.

THIRTY-THIRD DEFENSE

185. Imposition of punitive damages in this case would violate the Excessive Fines Clause of the Eighth Amendment to the United States Constitution and Article I, Section 15, of the Alabama Constitution.

THIRTY-FOURTH DEFENSE

186. Plaintiff's fraud-based claims are barred because Plaintiff knew or should have known for more than a decade before the filing of the complaint that published AWPs do not represent actual averages of the prices at which providers or pharmacies are able to purchase drugs.

THIRTY-FIFTH DEFENSE

187. Some or all of Plaintiff's claims against Genzyme arise from Plaintiff's failure to follow its federal and state statutory and regulatory obligation to set reimbursement rates at Estimated Acquisition Cost.

THIRTY-SIXTH DEFENSE

188. Plaintiff's unjust enrichment claims are barred, in whole or in part, because Genzyme did not retain any money belonging to the State as a result of any alleged overpayments as required under Alabama law.

THIRTY-SEVENTH DEFENSE

189. Plaintiff's claim for equitable relief in the form of a constructive trust or an accounting is without grounds and is barred by equitable principles.

THIRTY-EIGHTH DEFENSE

190. Genzyme adopts by reference any additional applicable defense pled by any other Defendant not otherwise pled herein.

THIRTY-NINTH DEFENSE

191. Genzyme hereby gives notice that it intends to rely upon any other and additional defense that is now or may become available or appear during, or as a result of the discovery proceedings in this action and hereby reserves its right to amend its answer to assert such defense.

WHEREFORE, Genzyme prays that this Court: (1) Dismiss Plaintiff's Second Amended Complaint with prejudice and enter judgment in favor of Genzyme and against Plaintiff; (2) Award Genzyme its costs and expenses; and (3) Grant such other and further relief for Genzyme as this Court deems just and proper.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon Plaintiff's counsel by placing a copy in the United States Mail, postage prepaid, and properly addressed to them on this the 30th day of January, 2006. I further certify that, in accordance with an agreement among defense counsel, I have served a copy of the foregoing by electronic mail upon counsel for each of the remaining parties listed below on the same date.



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